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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

YOLANDA CONSUELO GARCIA,

Defendant and Appellant.

B289359

(Los Angeles County
Super. Ct. No. YA091570)

APPEAL from a postjudgment order of the Superior Court of Los Angeles County. James R. Brandlin, Judge. Reversed and remanded with directions.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie C. Brenan and Heather B. Arambarri, Deputy Attorneys General, for Plaintiff and Respondent.

Yolanda Garcia appeals the postjudgment order denying her request to recall her sentence pursuant to Penal Code section 1170, subdivision (d). Appellant is currently serving a 14-year sentence for two drug-related offenses and several prior convictions for drug offenses. Nine years of the sentence are for three 3-year enhancements for the prior convictions imposed pursuant to Health & Safety Code section 11370.2, subdivision (c).

Appellant and the Attorney General agree that in light of the recent amendment to Health and Safety Code section 11370.2, all of the 3-year enhancements imposed under that statute must be stricken. We concur and remand the matter to the trial court for resentencing to strike the 3-year enhancements imposed pursuant to Health and Safety Code section 11370.2. On remand, the trial court may reconsider the entire sentence, including the exercise of its discretion to impose or strike the Penal Code section 667.5 enhancements in accordance with our prior opinion in this matter. (See *People v. Garcia* (May 17, 2017, B272454) [nonpub. opn.] at pp. 6–8.)

PROCEDURAL BACKGROUND

Appellant pleaded guilty to one count of possession for sale of a controlled substance (methamphetamine) (Health & Saf. Code, § 11378; count 1) and one count of transportation of a controlled substance (methamphetamine) (Health & Saf. Code, § 11379, subd. (a); count 2). She also admitted to having four prior convictions for drug offenses under Health and Safety Code section 11370.2, subdivision (c), and seven prior prison terms pursuant to Penal Code section 667.5, subdivision (b). (*People v. Garcia, supra*, B272454, at pp. 2, 6.) The trial court imposed a 14-year sentence, consisting of the high term of 4 years on count 2, plus three consecutive 3-year enhancements pursuant to

Health and Safety Code section 11370.2, subdivision (c), and a 1-year enhancement pursuant to Penal Code section 667.5, subdivision (b) for one of the prior prison terms. The court also imposed a concurrent term of 3 years on count 1, and imposed and stayed the sentences on the remaining prior conviction and prison term enhancements. (*Id.* at p. 2.)

In the first appeal, we remanded with directions that the trial court stay the sentence on count 1 pursuant to Penal Code section 654 and correct appellant's presentence custody credits to 84 days. In addition, we directed the trial court to strike one of the two Penal Code section 667.5 enhancements in each instance where appellant had admitted two qualifying convictions but served only a single prison term for both. Finally, we instructed the trial court to exercise its discretion to impose or strike the remaining Penal Code section 667.5 enhancements in accordance with Penal Code section 1385. (*People v. Garcia, supra*, B272454, at p. 6.)

The trial court resentenced appellant on October 3, 2017. The court imposed the upper term of 4 years on count 2, stayed sentence on count 1 under Penal Code section 654, and imposed three 3-year enhancements pursuant to Health and Safety Code section 11370.2, subdivision (c). The court also imposed one of the Penal Code section 667.5, subdivision (b) enhancements and struck the others.

DISCUSSION¹

I. The Amendment to Section 11370.2 Applies to Appellant's Case and Requires that All of the Three-Year Enhancements Imposed Under Health and Safety Code Section 11370.2 be Stricken

Appellant's sentence includes three 3-year enhancements imposed pursuant to Health and Safety Code section 11370.2, subdivision (c) based on three prior convictions for violations of sections 11378 and 11379. On October 11, 2017, after appellant's resentencing, the Governor signed Senate Bill No. 180 (Stats. 2017, ch. 677, § 1, eff. Jan. 1, 2018 (Senate Bill No. 180)), which amended section 11370.2, subdivision (c) to eliminate all but one of the qualifying convictions for imposition of the 3-year sentencing enhancement. Thus, as amended, section 11370.2 allows imposition of the enhancement only if the defendant has a prior conviction for using or inducing a minor to act as an agent in the commission of a drug offense in violation of section 11380. (Stats. 2017, ch. 677, § 1; *People v. Millan* (2018) 20 Cal.App.5th 450, 454–455 (*Millan*).)

Here, appellant's prior drug-related convictions were for violations of Health and Safety Code sections 11378 and 11379, not section 11380. Appellant and the Attorney General agree that Senate Bill No. 180 applies to all cases not yet final as of January 1, 2018, and that the enhancement under section

¹ Because the facts of the underlying offense are not in dispute, we omit the traditional statement of the facts from the opinion. (*People v. Reyes* (2016) 3 Cal.App.5th 1222, 1225, fn. 3.)

11370.2, subdivision (c) no longer applies to appellant's prior convictions for violations of sections 11378 and 11379.

The general rule of statutory construction holds that in the absence of any indication of a contrary intent in the statute, the Legislature is presumed to have intended only the prospective, not retroactive, operation of the statute. (Pen. Code, § 3; (*In re Estrada* (1965) 63 Cal.2d 740, 746 (*Estrada*).) However, an exception to this general rule is recognized where an amendment reduces the punishment for a specific crime. (*People v. Brown* (2012) 54 Cal.4th 314, 323–324 (*Brown*); *Estrada, supra*, 63 Cal.2d at p. 745.) In such cases, courts will presume the Legislature intended the amendment would apply retroactively to all nonfinal judgments. (*Brown, supra*, at p. 323; *Estrada, supra*, at p. 745.) “The rule in *Estrada* has been applied to statutes governing penalty enhancements, as well as to statutes governing substantive offenses.’” (*Millan, supra*, 20 Cal.App.5th at p. 455, quoting *People v. Nasalga* (1996) 12 Cal.4th 784, 792.) And it applies with equal force when the Legislature altogether abolishes a crime or an enhancement. (See, e.g., *People v. Rossi* (1976) 18 Cal.3d 295, 301; *People v. Babylon* (1985) 39 Cal.3d 719, 727–728.)

Here, appellant is currently appealing the sentence imposed on October 3, 2017, and the judgment of conviction in her case is therefore not final. (*People v. Smith* (2015) 234 Cal.App.4th 1460, 1465 [“A judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari [in the United States Supreme Court] have expired”].) Senate Bill No. 180 abolishes numerous sentencing enhancements, including the 3-year enhancements imposed in appellant's case. As an ameliorative amendment with no express saving clause or any indication the Legislature intended

prospective-only application, Senate Bill No. 180 applies retroactively to appellant's case and requires remand to the trial court to strike the enhancements under section 11370.2 and resentence appellant accordingly. (*Millan, supra*, 20 Cal.App.5th at pp. 454–455; *People v. Zabala* (2018) 19 Cal.App.5th 335, 344.)

II. On Remand, the Trial Court May Consider All Sentencing Options, Including Whether to Impose or Strike the Prior Prison Term Enhancements Under Penal Code Section 667.5

Because of the inherently integrated nature of a felony sentence, courts have long recognized that “[w]hen a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components. The invalidity of one component infects the entire scheme.” (*People v. Hill* (1986) 185 Cal.App.3d 831, 834; *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1258; see *People v. Castaneda* (1999) 75 Cal.App.4th 611, 613–614; *People v. Craig* (1998) 66 Cal.App.4th 1444, 1450–1452; *People v. Calderon* (1993) 20 Cal.App.4th 82, 88; *People v. Rojas* (1988) 206 Cal.App.3d 795, 802.)

In striking the 3-year enhancements and resentencing appellant on remand, the trial court is entitled to reconsider the full range of sentencing options and impose a lawful sentence consistent with the court's original and presumably unchanged sentencing goals. (*People v. Hill, supra*, 185 Cal.App.3d at p. 834; *People v. Burbine, supra*, 106 Cal.App.4th at p. 1258.) That is, the trial court may reconsider the entire sentence, including the exercise of its discretion to impose or strike the Penal Code

section 667.5 enhancements in accordance with our prior opinion in this matter. (See *People v. Garcia, supra*, B272454 at pp. 6–8.)

DISPOSITION

The matter is remanded to the trial court for resentencing to strike the three 3-year enhancements imposed pursuant to Health and Safety Code section 11370.2. On remand, the trial court may reconsider the entire sentence, including whether to impose or strike the 1-year prior prison enhancements under Penal Code section 667.5, subdivision (b), consistent with our prior opinion in this matter.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.